

U.S. Patent Application Serial No. 10/509,673
Amendment filed July 14, 2008
Reply to OA dated March 18, 2008

REMARKS

Claims 1, 3 and 5-25 are pending in this application. Claim 3 is amended herein. Upon entry of this amendment, claims 1, 3 and 5-25 will be pending. Entry of this amendment and reconsideration of the rejections are respectfully requested.

No new matter has been introduced by this Amendment. Support for the amendment to claim 3 is as follows. Claim 3 has been amended in the last line for clarity, as follows: “the bonded portion comprises opposing outer surfaces of the sheet material, wherein the opposing outer surfaces are each bonded to the inner wall surfaces of the container body ~~within~~ where the partitioning seal portion is formed.” This amendment is consistent with the wording of claim 3 that: “the partitioning seal portion is formed by separably bonding opposing inner wall surfaces of the container body.” The present amendment is to avoid the misinterpretation of the term “within” to mean that the bonded portion comprises opposing outer surfaces bonded to the inner surfaces between the inner surfaces throughout the entire partitioning seal portion, which would mean that the inner wall surfaces were not bonded to each other. (The intended meaning of “within” was that this was part of an overall structure.) The present amendment therefore replaces the word “within” to more clearly recite the structure.

Claims 1, 3, 5, 6, 9-12, 14-20, and 22-25 are rejected under 35 U.S.C. §103(a) as being unpatentable over Barney (US 5,462,526) in view of Larkin (US 4,602,910). (Office action paragraph no. 4)

The rejection of claim 1 and dependent claims 5, 6, 9-12, 14-16 and 25 is respectfully traversed. Reconsideration of the rejection of claim 3 and dependent claims 17-20 and 22-24 is respectfully requested in view of the clarifying amendment to claim 3.

The Examiner cites Barney as disclosing a multiple-chamber medical container having multiple chambers 12, 34 and 22, separated by partitioning seals (the pinched portions, unnumbered in Barney's Fig. 2), and medicinal outlet portion 40. The Examiner apparently considers Barney's rupturable pouch 30 to be the additional small container, and cites peripheral heat seal 64 as being the bonded portion bonding the small container to the container body.

The Examiner considers peelable seal 70 in Barney to be the "bonded portion" in the second-to-last clause of claim 1, but notes that Barney does not disclose the limitations of the last clause of claim 1, that the bonded portion comprises opposing outer surfaces of the sheet material, wherein the opposing outer surfaces are each bonded to the opposing inner wall surfaces in the vicinity of the partitioning seal portion.

The Examiner then cites Larkin for disclosing large chamber 10 surrounding a small medicament container 36, with seal 43 between the chambers formed by heat sealing the layers such that they are separately bonded. See Figs. 4 and 5. The Examiner notes the disclosure of column 4, lines 9-22, that the inner seal will break first. The Examiner states that it would have been obvious to modify the multiple-chamber medical container of Barney with the delaminating sheet configuration of Larkin in order to allow the inner seal to break at a lower pressure than the outer seals.

However, Applicant submits that the Larkin and Barney references cannot be combined to produce the present invention. In combining the Barney and Larkin references, the Examiner is replacing heat seal 70 in Barney with the seal structure in Larkin's Fig. 4. However, in Larkin's Fig. 4, second container 34 is within body section 11 of primary container 14 (see column 3, line 15), and includes walls 37 and 36 made of a layered material, that are sealed in area 43.

That is, Larkin's seal structure in Fig. 4 occurs at the site **where the front and back walls 18 and 15 come together**. If Barney were to be modified to have the seal structure of Larkin's Fig. 4, this would require the seal structure in Barney **where the walls are sealed together between the chambers**. That is, the proposed modification of Barney would yield one seal, corresponding to the "bonded portion" in the last clause of claim 1, but **without** an additional partitioning seal portion in the vicinity. Stated another way, the proposed modification of Barney would have to **replace** the existing seal (analogous to the partitioning seal portion) in Barney's Fig. 2 where walls 12 and 14 come together, and the result would have **no partitioning seal portion**. There is no apparent way to add Larkin's seal to Barney without replacing the existing seal. Therefore, Barney and Larkin cannot be combined to produce the invention of claim 1 and dependent claims 5-16 and 25.

Claim 3 has been amended to clarify the wording of the structure of the bonded portion, clarifying that the outer surfaces are bonded to the inner wall surfaces of the container body where the partitioning seal is formed. The above argument with regard to claim 1 is also applicable to claim 3. That is, the proposed combination of Barney and Larkin would require replacing the

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existing seal in Barney with that of Larkin, but this would result in a device having **no partitioning seal portion**.

Claims 1, 3, 5, 6, 9-12, 14-20, and 22-25 are therefore not obvious over Barney et al. '526 and Larkin '910, taken separately or in combination.

Claims 7 and 8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Barney in view of Larkin, and further in view of Inoue (US 5,423,421). (Office action paragraph no. 9)

The rejection of claims 7 and 8 is respectfully traversed, and reconsideration is requested.

Claims 7 and 8 depend from claim 1 and recite further limitations on the bonded portion. Claim 7 recites a plurality of bonded parts arranged with at least one nonbonded part positioned therebetween. The Examiner cites Inoue as disclosing a multichamber container wherein a small container is fluidly connected to a large container by a separable bonded section, citing Fig. 4. The Examiner states that this bonded section comprises a non-bonded portion 9 in the center of the bonded portion. This space portion 9 is described at column 4, line 63, of Inoue.

Inoue does disclose multiple chambers for containing medicaments, i.e., chambers 1a and 1b. In Inoue's Fig. 4, upper chamber 1a is within cover 5, cover 5 having walls of film 6. Fig. 4 of Inoue illustrates a seal between upper chamber 1a and lower chamber 1b, this seal occurring between portions of walls 6 at region 6c (see column 4, line 60). Cover 5 is specifically made of moisture- and gas-barrier film to protect the contents of chamber 1a (see column 6, lines 54-58). As such, the

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structure is somewhat analogous to that of Barney, which discloses pouch 30 within upper compartment 18.

However, Inoue's space portion 9 occurs in the seal of the film sheets 3 that form upper chamber 1a. These would be analogous to peelable seal 70 in Barney. Applicant has argued above that Barney and Larkin cannot be combined to produce the structure of base claim 1, and the disclosure of Inoue therefore does not overcome the deficiencies in the combination of Barney and Larkin with regard to the rejection of claim 1. Claims 7 and 8 are therefore not obvious over Barney et al. '526, Larkin '910 and Inoue '421, taken separately or in combination.

Claims 13 and 21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Barney in view of Larkin, and further in view of Becker (US 6,319,243). (Office action paragraph no. 10)

The rejection of claims 13 and 21 is respectfully traversed, and reconsideration is requested. Applicant notes that claim 13 ultimately depends from claim 1, while claim 21 ultimately depends from claim 3, and Applicant has argued above that these base claims are not obvious over the combination of Barney and Larkin.

The Examiner cites Becker for the disclosure of a multichamber mixing container wherein a plurality of breakable seals (18, 20) are positioned between the chambers to allow selective mixing. Becker is further cited for the disclosure of a plurality of outlets (31, 32, 34), such that fluid may be

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selectively drained. The Examiner states that it would be obvious to modify Barney and Larkin to have a plurality of fluid outlets, and that this would meet the limitations of claims 13 and 21.

However, the disclosure of Becker does not provide any suggestion or motivation to modify Barney or Larkin in a manner that would provide the structures recited in base claims 1 and 3. Claims 13 and 21 are therefore not obvious over Barney, Larkin or Becker, taken separately or in combination.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the applicants' undersigned agent at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed, the applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

KRATZ, QUINTOS & HANSON, LLP


Daniel A. Geselowitz, Ph.D.

Agent for Applicants
Reg. No. 42,573

DAG/xl

Atty. Docket No. 040520
Suite 400
1420 K Street, N.W.
Washington, D.C. 20005
(202) 659-2930



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Enclosure: Petition for Extension of Time